IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.661 of 2004

Dr.Sarwankumar Mandhwani,)
Age 30 years,at present residing)
at 103, Mahan Place, Near Lassi)
Hall, Ulhas Nagar.)..Petitioner

Versus

1. The Union of India,)
through its Ministry of)
External Affairs and Health)
and Social Welfare, New Delhi)
2. The Medical Council of India)
Aiwan-E-Galib Marg,)
Kotla Road, New Delhi-110 002)
3. The State of Maharashtra)..Respondents

Mr. V.M. Thorat, for the Petitioner
Mrs. B.A. Desai, Additional Solicitor General with Ms. S.I.Shah i/b. S.S. Sarkar for Respondent No.1.
Ms. Simran Puri, for Respondent No.2.
Mr. C.R. Sonawane, A.G.P. for Respondent No.3.

WITH

WRIT PETITION NO.663 OF 2004

Dr.Rekha Sarwankumar Mandhwani,)
Age 29 years,at present residing)
at 103, Mahan Place, Near Lassi)
Hall, Ulhas Nagar.)..Petitioner

Versus

1. The Union of India,)
through its Ministry of)
External Affairs and Health)
and Social Welfare, New Delhi)
2. The Medical Council of India)
Aiwan-E-Galib Marg,)
Kotla Road, New Delhi-110 002)
3. The State of Maharashtra)..Respondents

Mr. V.M. Thorat, for the Petitioner
Mrs. B.A. Desai, Additional Solicitor General with Ms. S.I.Shah i/b. S.S. Sarkar for Respondent No.1.
Ms. Simran Puri, for Respondent No.2.
Mr. C.R. Sonawane, A.G.P. for Respondent No.3.

WITH

WRIT PETITIONL NO.664 OF 2004

Dr.Dilip Inderlal Moorpani,)
Age 32 years,at present residing)
at Nakkita Palace, Flat No.402,)

Section-17, Ulhasnagar.-3.)..Petitioner

Versus

1. The Union of India,)
through its Ministry of)
External Affairs and Health)
and Social Welfare, New Delhi)
2. The Medical Council of India)
Aiwan-E-Galib Marg,)
Kotla Road, New Delhi-110 002)
3. The State of Maharashtra)..Respondents

Mr. V.M. Thorat, for the Petitioner
Mrs. B.A. Desai, Additional Solicitor General with Ms. S.I.Shah i/b. S.S. Sarkar for Respondent No.1.
Ms. Simran Puri, for Respondent No.2.
Mr. C.R. Sonawane, A.G.P. for Respondent No.3.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 1st March, 2005

ORAL JUDGMENT: (PER F.I. REBELLO, J.)

. Rule. Heard forthwith.

. These petitions are being disposed of by common order as the facts are similar and they involve the same question of law. All the petitioners have passed M.B.B.S. Degree from Universities in Pakistan. They approached this Court placing reliance on a Notification dated 14th February, 1992. By that Notification in exercise of the powers under sub-section (3) of Section 12 of the Indian Medical Council Act, 1956 the Central Government after consultation with the Medical Council of India amended the Second Schedule and included the following Universities from Pakistan with the Degree as notified in the Second Schedule. The Universities were:-

University of Sind M.B.B.S. Bachelor of Medicine and
Bachelor of Surgery U.Karachi

University of Sind M.B.B.S. Bachelor of Medicine and
Bachelor of Surgery U.Sind

University of Punjab M.B.B.S. Bachelor of Medicine and

Bachelor of Surgery U.Punjab

2. On behalf of the respondents various replies were filed. After hearing the petitioners and respondents for sometime, prima facie we were of the view that as the Degree obtained by the petitioners fell within the Second Schedule by virtue of Section 12, they would be entitled to be registered either with the Medical Council of India or the State Medical Council. In view of that, respondents were called upon to file their reply to the notification.

3. At the last hearing on behalf of the Union of India, learned Additional Solicitor General has produced before us a subsequent Notification dated 17th November, 1999 by which the three entries which were included in Schedule II of Notification dated 14th February, 1992 have been deleted from the Second Schedule. In other words those entries no longer form part of the Second Schedule from 17th November, 1999.

4. On behalf of the petitioners their learned Counsel contends that considering the language of Section 15 and Section 12 of the Indian Medical Council Act, 1956, once the petitioners had obtained qualifications after the amendment to the Schedule and before its omission in 1999, they were entitled to practice within the territorial limits of India and entitled to be registered either with Medical Council of India or the State Medical Council. Learned Counsel wants us to read the expression "sufficient qualification" for enrolment in Section 15 to mean recognised qualification. We

are afraid that cannot be done. It is a normal Rule of construction that in the first instance, the language must be read as it stands and only in the event it is incapable of construction, then to apply other modes of construction. In the instant case the expression "sufficient qualification" has to be seen in the context of the Schedule. Persons having qualification as set out in Schedule III cannot as a matter of course practice unless they are citizens of India and pass qualifying tests as prescribed. It is in that context that Section 15 has used the expression "sufficient qualification" and not 'recognised qualification'. It is, therefore, clear that in Section 15 the expression sufficient qualification cannot be read to mean recognised qualification.

5. The question, therefore, is whether the petitioners considering the fact that between 1992 and 1999 obtained the Degree qualifications of University of Sind and University of Punjab respectively and which were included in the Second Schedule are entitled to be registered with the Medical Council of India even though they did not apply for registration before the omission of the entries in the Second Schedule. Admittedly all the petitioners had applied after 2000. In other wards they do not belong to that class of persons who may have applied between the years 1992 and 1999. We are, therefore, not called upon to consider the case of that class of persons who may have been registered, but on account of subsequent events of deletion may not be able to practice. We are concerned here with the class of persons that too a distinct class who contend that they are entitled to practice even after omission in the Second Schedule by the Notification of 1999.

. Section 12 permits the Central Government after consultation with the Medical Council of India to amend the Schedule provided the requirement of sub-section (2) of Section 12 have been met. In the instant case though it is not on record, on behalf of the Union of India, learned Additional Solicitor General has made a statement that there is no reciprocity between India and Pakistan. The only countries which India has reciprocity are Nepal and Bangladesh. Even if that had not been the position, the question really is wehther merely because for some time the qualification from the Universities of Sind and Punjab were included in the Second Schedule, would that confer any legal right on Graduates of those Universities to be registered in India. In our opinion the answer is no. The right to practice within the territorial limits of India or being registered with the Medical Council of India or State Medical Council would only be in the event at that time they applied for registration their Degree from the University in the country from which they have passed is included in the Second Schedule. In the instant case it is not so. We are, therefore, clearly of the opinion that there is no substance in the petitions.

6. Apart from that though the petitioners approached this Court for the exercise of the extra ordinary jurisdiction and placed reliance of the Notification of 14th February, 1992 the Notification of 17th November, 1999 was not placed before this Court. It was sought to be contended that the Notification of 17th November, 1999 was inapplicable and as they had a vested right pursuant to the Notification of 14th February, 1992 and

as such that was not disclosed. We are clear that this explanation cannot be accepted. The learned Counsel now points out that they were not aware of the same. We need not pronounce on the same, though in our opinion it is difficult to accept that the petitioners who had with them the Notification of 14th February, 1992 to rely upon would not be in the know of the subsequent notification of 17th November, 1999 by which the entries were omitted, as the Petitions are filed only in the year 2004.

7. Learned Counsel for the petitioners had sought to rely on the judgment of the Division Bench of this Court in the case of **Dr.Arun H. Bakle v. Union of India and Ors., AIR 1986 Bom.230.** That judgment was interpreting the Sections 15 and 33 as also Section 13(3). The Apex Court has subsequently in the case of **Sanjeev Gupta & Ors. vs. Union of India & Anr., in Writ Petition (Civil) No.604 of 2002 and Other Petitions** has considered the law in so far as registering with the Medical Council of India or State Medical Council by those possessing Degrees from foreign Universities. To our mind, therefore, this judgment of the Apex Court holds the field and will have to be followed by us for the purpose of consideration of Sections 12, 13 and 15 of Medical Council of India Act. We make it clear that if otherwise the petitioners are eligible under Section 13 of the M.C.I. Act then they may so apply and this judgment will not stand in their way.

8. For all the aforesaid reasons we find no merits in these Petitions. Rule in all the petitions discharged.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)